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In The

Supreme Court of the United States

October Term, 1993

KARL A. SCHLEDWITZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE MAY 26, 1988, STATUTE OF LIMITATIONS AGREEMENT BETWEEN THE GOVERNMENT AND MR. SCHLEDWITZ WAS A CONTRACT AND WHETHER UNDER THE TERMS OF THE AGREEMENT, APPLYING THE APPROPRIATE RULES OF CONTRACT LAW AND TRADITIONAL NOTIONS OF DUE PROCESS, THE CHARGES WERE BROUGHT PREMATURELY AND THEREFORE MUST BE DISMISSED?

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KARL A. SCHLEDWITZ,

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Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Petitioner Karl A. Schledwitz respectfully prays that a writ of certiorari issue to review the opinion of the Court of Appeals for the Sixth Circuit entered on December 20, 1993, and the denial of the petition to rehear, which was entered on February 17, 1994.

OPINIONS BELOW

The Memorandum Opinion of the District Judge, which dismissed Counts One through Seven, dated April 22, 1992, is attached at 11a-13a. The Memorandum Opinion of the District Court reversing its decision to dismiss

Counts One through Seven, dated May 4, 1992, is attached at 14a-18a.

The opinion of the Court of Appeals, is reprinted in the appendix at 1a-10a. The order denying the petition to rehear is likewise reprinted in the appendix. App. at 19a-20a.

JURISDICTION

The opinion of the Sixth Circuit was entered on December 20, 1993. The petition to rehear was denied in an order dated February 17, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amendments 5 & 6.

These provisions are set forth at App. 29a.

STATEMENT OF THE CASE

A. Introduction.

In 1987 Karl Schledwitz was preparing for a trial ("the Memphis case") pending on a separate but related

indictment. The Memphis case involved Karl's relationship with the Butcher banking system and his co-defendant, Congressman Harold Ford.[1]

While the Memphis case was pending, the government informed Mr. Schledwitz that he would be prosecuted for other charges involving his dealings with the Butcher banks.[2] Beginning on May 18, 1987, and prior to the commencement of trial in the Memphis case, the government and Karl Schledwitz entered into a series of four agreements which extended the statute of limitations in this case.[3]

The first three agreements were drafted by Mr. Schledwitz's counsel and were for fixed periods of time. The fourth and final agreement, which was drafted by the government, did not end on a date certain but, instead, created a ninety day window which would open when the Memphis case was resolved.

The two, key provisions of the May 26, 1988, agreement are:

> a. "It is, therefore, agreed that Karl A. Schledwitz will, and does hereby, waive the application of the statute of limitations for a period of

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[1] On April 27, 1990, the first Memphis trial ended in a mistrial. On April 9, 1993, the second Memphis trial ended in acquittal of all defendants on all charges.

[2] Some or all of these allegations would eventually make up part of the indictment in this case, CR No. 1-92-13.

[3] Copies of each of these agreements are attached: May 18, 1987, agreement is attached at 21a; July 7, 1987, agreement is attached at 23a; January 5, 1988, agreement is attached at 25a; and May 26, 1988, agreement is attached at 27a.

> ninety (90) days from the judgment of conviction, acquittal, dismissal or other resolution of all pending charges in United States v. Schledwitz, CR. 87-20193-H, ... "
>
> and
>
> b. " . . . it is the intent of the parties that this Agreement and Waiver extend the [prior agreements] for an additional ninety (90) days from and after the judgment of conviction, acquittal, dismissal or other resolution of all pending charges in United States v. Schledwitz, CR. 87-20193-H."

(27a-28a).

On January 21, 1992, before the resolution of the Memphis case, the indictment in this case was returned by a grand jury in Chattanooga, Tennessee. The new indictment alleged eight mail fraud violations. Mr. Schledwitz filed a motion, on March 30, 1992, seeking to dismiss Counts One through Seven because the government had brought the Chattanooga indictment in violation of the May 26, 1988, agreement waiving the statute of limitations.[4]

The agreement was intended to delay a second indictment until the resolution of the Memphis case. The May 26, 1988, agreement created a ninety day window which did not open until April 9, 1993, when the Memphis trial was resolved by an acquittal.

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[4] The Memphis trial had ended in a mistrial but the District Court, in this case, ruled in a separate order that a "mistrial" was not a resolution as contemplated by the May 26, 1988, agreement.

B. Findings of the United States District Judge.

The District Court for the Eastern District of Tennessee, considered the motion to dismiss based on the pleadings. On April 22, 1992, Judge Thomas G. Hull, issued an order which stated:

> In his alternative motion, now ripe for disposition, Mr. Schledwitz argues that, if the Western District charges are not resolved, then the government has violated the agreement by bringing the instant charges too soon. The agreement was intended to protect him from prosecution here until after resolution of the charges he faced in the Western District and simply provided the government with a ninety-day window in which it could file the otherwise time-barred charges. This window has not yet opened.
>
> The Court agrees that the government cannot have it both ways. Either the Western District charges are resolved (and the first seven counts are time-barred), or this action is premature. The Court is of the opinion that this action is premature.

(12a).

Based on this interpretation of the agreement, the District Court ordered that Counts One through Seven should be dismissed without prejudice.

On April 30, 1992, the government filed a motion asking the District Court to reconsider the dismissal of Counts One through Seven. The government contended that the agreement was not intended to delay the new charges until after the resolution of the Memphis trial.

Instead, the government contended that the consideration to Mr. Schledwitz was an opportunity to have discussions with the government about the possible charges. The government argued that, although this agreement did not guarantee any specific period of delay, Mr. Schledwitz ended up receiving a five year delay.

The government's position was that the agreement extended the statute of limitations for an infinite period of time plus ninety days. In return, Mr. Schledwitz received the opportunity to talk to the government.

Recognizing that someone might view this as illusory consideration, especially considering the significant consideration given by Mr. Schledwitz, the government argued that:

> Mr. Schledwitz did not receive illusory consideration. It was certainly to his benefit for the government to delay the instant case even one day to consider a disposition favorable to him.[5]

On May 19, 1992, the District Court reversed its earlier ruling stating:

> [T]he government requests that this Court reconsider its order dismissing the seven counts. [ ]. In making that ruling, *the Court interpreted a*

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[5] Such a result does, of course, not solve the problem of illusory consideration. The question of valid consideration looks back to the time period when the contract was formed. *See Corbin on Contracts*, § 145. The government's view of the agreement is that they only promised to talk to Mr. Schledwitz. According to their view, this promise was not binding on them for a year, a week, a day or an hour. They could have talked to Mr. Schledwitz as they signed the agreement and then left free to seek the indictment at any time they chose.

> ***poorly-written*** *"Agreement and Waiver of Statute of Limitations"* signed by the parties *as creating a 90-day window* in which the government could bring otherwise time-barred charges against Mr. Schledwitz *after the final disposition of CR 87-20193-H* pending against him in the United States District Court for the Western District of Tennessee.
>
> Upon reconsideration of that ruling, the Court accepts the government's argument that, under the agreement, it could have brought the charges against Mr. Schledwitz any time within the last five years, but no later than 90 days after resolution of the other case. Accordingly, the motion to reconsider is hereby GRANTED and that portion of the April 22 Order which dismissed the first seven counts of the indictment is hereby SET ASIDE.

(14a-15a). (emphasis added).

In July 1992, this case went to trial in Greenville, Tennessee. At the close of the government's proof the District Court granted a motion for judgment of acquittal on Counts Four through Eight. Counts One through Three went to the jury which returned verdicts of guilty as to each.

C. The Sixth Circuit Opinion.

Karl Schledwitz filed a timely appeal to the Sixth Circuit Court of Appeals. Mr. Schledwitz requested that the Sixth Circuit apply the appropriate rules of contract law to his agreement with the government and reinstate the original order of the District Court.

In a *per curiam*, unpublished opinion, dated December 20, 1993, the Court held that the District Court's interpretation of the meaning of the agreement presented only an issue of fact and they reviewed for clear error. The Court summarily held:

> We find that the document by its terms prohibits the government from waiting for a period longer than ninety days after the charges mentioned in the waiver agreement were resolved. There was nothing in the document even hinting that a prosecution started at any earlier time would be premature.

(5a-6a).

Mr. Schledwitz's petition for rehearing and petition for rehearing *en banc* was denied on February 17, 1994, without comment. (19a).

REASON FOR GRANTING THE WRIT

THE MAY 26, 1988, STATUTE OF LIMITATIONS AGREEMENT BETWEEN THE GOVERNMENT AND MR. SCHLEDWITZ WAS A CONTRACT AND UNDER THE TERMS OF THE AGREEMENT, APPLYING THE APPROPRIATE RULES OF CONTRACT LAW AND TRADITIONAL NOTIONS OF DUE PROCESS, THE CHARGES WERE BROUGHT PREMATURELY AND THEREFORE MUST BE DISMISSED.

I. Introduction –

Mr. Karl A. Schledwitz entered into a series of written agreements extending the statute of limitations for commencing prosecution. The final agreement, which was ambiguous, was drafted by the government. The

appellate court below ignored principles of contract law and, using the wrong standard of review, construed the ambiguous written agreement against Mr. Schledwitz. This decision was in conflict with other federal appellate decisions, including the Sixth Circuit, on the same issue.

Whether the last written agreement was a contract presents an important but limited federal question of first impression which has not been, but should be, decided by this Court.

This petition presents two very simple questions:

A. Was the May 26, 1988, agreement a contract between the government and Karl A. Schledwitz?

B. If it is a contract, did the application of basic contract law require the District Court to dismiss the charges in this case as premature?

The District Court's first decision on these questions led it to dismiss the charges as premature. When that Court reconsidered it found that a contract, "poorly written" by the government, could be read the way the government suggested. The District Court's second opinion is contrary to long standing principles of contract law.

The Sixth Circuit's opinion is remarkable for its complete lack of any discussion of basic contract principles.

For the Sixth Circuit to reach the result it did, it had to ignore important principles of contract law and crucial facts.

The Court of Appeals did not address the fact that the May 1988 agreement was drafted *by the government*. Nor did that Court explain its finding "that there was

nothing in the document even hinting that a prosecution started at any earlier time would be premature." This finding is startling in light of the District Court's first order which held that the charges were premature.

The key facts, as presented to the District Court and the Sixth Circuit, are relatively simple and undisputed:

> a. The government and Karl Schledwitz signed four separate agreements where Mr. Schledwitz waived the statute of limitations.
>
> b. The fourth, and final agreement, was entered into on May 26, 1988.
>
> c. The fourth, and final agreement, was drafted by the government.
>
> d. The government has stated that their intention was that the fourth agreement would extend the statute of limitations for an indefinite period plus ninety days.
>
> e. Mr. Schledwitz has stated that it was his intention to create a ninety day window that would only open after the resolution of all pending charges in *United States v. Schledwitz*, CR. 87-20193-H. [the Memphis case].
>
> f. The dispute between the government and Mr. Schledwitz centers on two passages in the May 26, 1988, agreement.
>
> > 1. "It is, therefore, agreed that Karl A. Schledwitz will, and does hereby, waive the application of the statute of limitations for a period of ninety (90) days from the judgment of conviction, acquittal, dismissal or other resolution of all pending charges in United States v. Schledwitz, CR. 87-20193-H, ... "

> 2. " . . . it is the intent of the parties that this Agreement and Waiver extend the [prior agreements] for an additional ninety (90) days from and after the judgment of conviction, acquittal, dismissal or other resolution of all pending charges in United States v. Schledwitz, CR. 87-20193-H."

May 26, 1988 Agreement, at 27a-28a.

II. Was the Agreement a Contract?

Whether the May 26, 1988, agreement was a contract, presents a limited question of first impression.[6] This Court has not specifically ruled on whether an agreement to waive a statute of limitations is a contract. However, the Court has considered this question in another context that is sufficiently analogous to make an easy comparison to this situation.

In *Santobello v. New York*, 404 U.S. 257 (1971), this Court used contract principles to decide what action to take when a plea agreement was breached by the government. "The language of *Santobello* has established the principle that a plea bargain is contractual in nature." *United States v. Herrera*, 928 F.2d 769, 771 (6th Cir. 1991).[7]

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[6] The definition of "contract" is: "An **agreement** between two or more persons which creates an obligation to do or not to do a particular thing." BLACK'S LAW DICTIONARY 291-292 (5th ed. 1979).

[7] Several other Circuit Courts of Appeal have accepted this reading of *Santobello*: *See United States v. Walsh*, 7 F.3d 1064, 1066 (1st Cir. 1993); *United States v. Salcido-Contreras*, 990 F.2d 51, 52 (2d Cir. 1993); *United States v. Ringling*, 988 F.2d 504, 506 (4th Cir.

However, *Santobello* also requires that the analysis of plea agreements must be conducted at a more stringent level than in a commercial contract situation because the rights involved are generally fundamental and constitutionally based.[8]

Several courts have already applied the principles of *Santobello* to other situations where the government has entered into an agreement with a citizen.[9] These cases suggest that the principles of *Santobello* should apply whenever a citizen acts to his detriment in reliance upon governmental promises.

The Sixth Circuit's opinion simply failed to address the basic contract issues presented by this case. Allowing

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1993); *United States v. Jimenez*, 992 F.2d 131, 134 (7th Cir. 1993); *United States v. Britt*, 917 F.2d 353, 359 (8th Cir. 1990); and *United States v. Escamilla*, 975 F.2d 568, 571 (9th Cir. 1992). Other circuits have added additional protections for defendants because plea agreements affect significant constitutional rights.

[8] *See United States v. Ringling*, 988 F.2d 504, 506 (4th Cir. 1993); *Carnine v. United States*, 974 F.2d 924, 928 (7th Cir. 1992); *United States v. Herrera*, 928 F.2d 769, 772 (6th Cir. 1991); *United States v. Britt*, 917 F.2d 353, 359 (8th Cir. 1990); *United States v. Calabrese*, 645 F.2d 1379, 1390 (10th Cir. 1981); and *Cooper v. United States*, 594 F.2d 12, 15-16 (4th Cir. 1979).

[9] *See United States v. Streebing*, 987 F.2d 368, 372 (6th Cir. 1993) (cooperation agreement is analogous to a plea agreement); *United States v. Sophie*, 900 F.2d 1064, 1071 (7th Cir. 1990) (plea agreements, sentence agreements and immunity agreements are contracts); *Johnson v. Lumpkin*, 769 F.2d 630, 633 (9th Cir. 1985) (plea agreements and analogous contexts); and *United States v. Carrillo*, 709 F.2d 35, 36 (9th Cir. 1983) (cooperation agreement is analogous to a plea agreement). *Cf., United States v. Rodman*, 519 F.2d 1058, 1059-60 (1st Cir. 1975) (SEC breached agreement not to recommend prosecution).

a poorly written contract to be read in the light most favorable to the drafter is contrary to the rulings of this Court, the various courts of appeal and several centuries of basic contract law.

III. Application of Basic Contract Law.

In a span of less than thirty days the District Court read the agreement in this case in two different ways. First, the court held that the agreement created a ninety day window that did not open until the charges in the Memphis case were resolved.

In reversing itself, the District Court found that this "poorly written" agreement, which had been drafted by the government, could be read as the government suggested.

The May 1988 agreement was an ambiguous contract which, under the appropriate principles of contract law, should have been construed against the government. The only appropriate result should have been to dismiss the charges as having been brought in violation of the agreement/contract between the government and one of its citizens.

At a minimum, due process requires the government to deal with each citizen in a fair and equitable manner. As the Sixth Circuit itself has previously stated, "[f]undemental fairness is a core component of the Due Process Clause of the Fifth Amendment." *United States v. Barger*, 931 F.2d 359, 363 (6th Cir. 1991).

a. Basic Contract Law.

If a contract is plain and unambiguous, its meaning must be determined from the four corners of the instrument.[10] *Green v. Biddle*, 21 U.S. 1 (1823). "If a written contract [i]s clear and unambiguous and not subject to more than one interpretation it need not be opened to judicial interpretation." *South Hampton Co. v. Stinnes Corp.*, 733 F.2d 1108, 1116 (5th Cir. 1984).

Ambiguity exists where the words of a contract are reasonably susceptible to more than one meaning. *Burger King Corp. v. Horn & Hardart Co.*, 893 F.2d 525 (2d Cir. 1990). The agreement in this case should be found to be ambiguous based on the District Court's two different interpretations of the agreement within thirty days.[11] "It is a generally accepted rule, which requires no citation to authority, that if a contract is reasonably susceptible to more than one interpretation, it is ambiguous."[12]

The doctrine of *contra proferentum* applies to contract-interpretation cases if:

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[10] Mr. Schledwitz has always thought that the agreement was plain and unambiguous and created a ninety day window which would open after the resolution of the Memphis charges. The two opposite interpretations given to the agreement by the District Court and the third interpretation made by the Sixth Circuit would suggest that the agreement is not as plain as Mr. Schledwitz thought it was.

[11] Once the district court realized the agreement was ambiguous it should have held an evidentiary hearing to provide sufficient information for interpreting the agreement.

[12] *Edward R. Marden Corp. v. United States*, 803 F.2d 701, 705 (Fed.Cir. 1986).

1. the contract is ambiguous, i.e., it sustains the interpretations advanced by both parties;

2. the ambiguity is not patent; and

3. the non-drafting party's interpretation is reasonable.

See Blough v. United States, 17 Cl.Ct. 186, 189 (1992).[13]

"The doctrine of *contra proferentum* places the risk of latent ambiguity, lack of clarity, or absence of proper

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[13] The doctrine of *contra proferentum* has been applied by federal courts in a variety of situations: *Grumman Data Systems Corp. v. Widnall*, 15 F.3d 1044, 1047 n. 4 (Fed.Cir. 1994) (appeal of GSA decision not to accept bid); *Commercial Union Ins. v. Walbrook Ins. Co.*, 7 F.3d 1047, 1053 n. 8 (1st Cir. 1993) (interpretation of insurance liability); *Phillips v. Lincoln Nat. Life Ins. Co.*, 978 F.2d 302, 311-314 (7th Cir. 1992) (application of doctrine to ERISA case); *Lazovitz, Inc. v. Saxon Const., Inc.*, 911 F.2d 588, 592 (11th Cir. 1990) (contract between general contractor and subcontractor); *Blough v. United States*, 17 Cl.Ct. 186, 189 (1989) (contract with Post Office for modification of collection boxes); and *Fort Vancouver Plywood Co. v. United States*, 860 F.2d 409, 413-414 (Fed.Cir. 1988) (timber harvesting contract with Dept. of Agriculture).

warning on the drafting party."[14] This Court has used the doctrine of *contra proferentum* in a variety of contexts.[15]

In *United States v. Seckinger*, 397 U.S. 203 (1970), this Court interpreted the provisions of an ***ambiguous*** contract between the United States and a private company. The Court held that:

> In fashioning a federal rule we are, of course, guided by the general principles that have evolved concerning the interpretation of contractual provisions such as that involved here. Among these principles is the general maxim that a contract should be construed most strongly against the drafter, which in this case was the United States.

397 U.S. at 210.

The *Seckinger* Court went on to conclude:

> Finally, our interpretation adheres to the principle that as between two reasonable and practical

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[14] *Big Chief Drilling Co. v. United States*, 26 Cl.Ct. 1276, 1299 (1992).

See also, RESTATEMENT (SECOND) OF CONTRACTS § 206: Interpretation Against the Draftsman:

> In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds.

See also, Farnsworth, *Contracts*, (2d ed.) at p. 518.

[15] *See American Surety Co. v. Pauly*, 170 U.S. 133 (1898); *Moulor v. American Life Ins. Co.*, 111 U.S. 335 (1884); *Garrison v. United States*, 74 U.S. (7 Wall.) 688 (1869); and *Mut. Ins. Co. v. Wright*, 68 U.S. (1 Wall.) 456 (1864).

> constructions of an ambiguous contractual provision, such as the two proffered by the Government, the provision should be construed less favorably to that party which selected the contractual language. This principle is appropriately accorded considerable emphasis in this case because of the Government's vast economic resources and stronger bargaining position in contract negotiations.

397 U.S. at 216.

Under traditional rules of contract interpretation and due process, the District Court's first ruling was correct when it construed the disputed terms of the contract against the government. The District Court would have reached the same result if it had looked to the body of law which has developed for the interpretation of plea agreements.

b. Plea Agreement Cases.

It is helpful to turn to the plea agreement cases to see how contract principles have been applied in a similar context. In *United States v. Muzika*, 986 F.2d 1050 (7th Cir. 1993), the Court said:

> The existence and meaning of these contracts are determined by ordinary contract principles of offer and acceptance. The agreements are governed by an objective standard, and we must inquire about the parties' reasonable expectations.

986 F.2d at 1054. (citations omitted).

In *United States v. Anderson*, 970 F.2d 602 (9th Cir. 1992), the Ninth Circuit was confronted with a plea agreement that "could mean" what the government said it meant. The Court did not stop its analysis with that finding.[16] Instead, the Ninth Circuit went on to find that while the language was not clearly supportive of Anderson's interpretation, it was not necessarily inconsistent with it either. 970 F.2d at 606.

The *Anderson* Court continued and stated that:

> Our holding that this plea agreement is ambiguous does not automatically render Anderson's interpretation of it correct. We leave it to the district court to decide what obligations the agreement imposed upon the government. The district court should resolve the issue by objective standards. However, the government is to be held to the literal terms of the agreement, and ordinarily must bear responsibility for any lack of clarity.

970 F.2d at 607. (citations omitted).

Numerous decisions involving plea agreements have placed the responsibility on the government to insure that the agreements are clear and unambiguous.[17] The First Circuit, in *United States v. Giori*, 840 F.2d 1022 (1st

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[16] The district court in this case made a similar finding when in its second order it held that the agreement could be read the way the government contended. However, the district court offered no further analysis.

[17] This additional requirement has been placed on the government regardless of whether they drafted the agreement or the defendant did. In this case the disputed agreement was drafted by the government.

Cir. 1988), listed the special responsibilities the government has:

> This court has interpreted *Santobello* to place a heavy burden upon the government: "[T]he most meticulous standards of both promise and performance must be met by prosecutors engaging in plea bargaining." *Correale*, 479 F.2d at 947. We have cautioned the government to avoid narrow interpretations of language within a plea agreement where such a construction would violate the spirit of that agreement. *See Garcia*, 698 F.2d at 37 ("A plea agreement is not a place to resort to a rigidly literal approach in the construction of language.") (quoting *United States v. Bowler*, 585 F.2d 851, 854 (7th Cir. 1978)) (citation omitted). Further, we have imposed a duty upon the government, when drafting an agreement, to present a recommendation "which is lawful, clear and consistent both internally and with respect to the underlying promise." *Correale*, 479 F.2d at 949.
>
> * * *
>
> Given the relative interests implicated by a plea bargain, we find that the costs of an unclear agreement must fall upon the government. While we affirm the general applicability of contract principles, we hold that the government must shoulder a greater degree of responsibility for lack of clarity in a plea agreement.

840 F.2d at 1026.[18]

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[18] *See also Carnine v. United States*, 974 F.2d 924, 928-29 (7th Cir. 1992); *United States v. Rewis*, 969 F.2d 985, 988 (11th Cir. 1992) (plea agreement that is ambiguous must be read against

IV. Conclusion

The poorly written, government drafted agreement between the United States and Karl A. Schledwitz was a contract. Had the Sixth Circuit or the District Court applied the relevant principles of traditional contract law, or used the analogous area of plea agreements, they would have been required to dismiss the charges in this case because they were brought in violation of the May 1988 agreement.

Respectfully submitted,

RITCHIE, FELS & DILLARD P.C.

W. THOMAS DILLARD
Counsel of Record
KENNETH F. IRVINE, JR.
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Counsel for Karl Schledwitz

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the government); *Kingsley v. United States*, 968 F.2d 109, 114 (1st Cir. 1992) (government held to the most meticulous standards of both promise and performance); and *United States v. Harvey*, 791 F.2d 294, 299 (4th Cir. 1986).

No. _____

In The

Supreme Court of the United States

October Term, 1993

KARL A. SCHLEDWITZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

APPENDIX

No. 92-6314

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NOT FOR PUBLICATION

FILED: December 20, 1993

UNITED STATES OF AMERICA Plaintiff-Appellee v. KARL SCHLEDWITZ, Defendant-Appellant	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

BEFORE; RYAN and **BOGGS,** Circuit Judges; and **ROSEN,** District Judge.*

PER CURIAM: Karl Schledwitz appeals from his conviction on three counts of mail fraud. He contends that he was tried in violation of the statute of limitations, and complains of several procedural errors at trial. For the reasons given below, we affirm the conviction.

I

Karl Schledwitz was an attorney in Memphis, and an associate of Jacob F. Butcher and C. H. Butcher, Jr., who together controlled a number of banks in Tennessee and Kentucky. Schledwitz was allegedly a "player" in their

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* The Honorable Gerald E. Rosen, United States District Judge for the Eastern District of Michigan, sitting by designation.

group, in that, according to the government, he agreed to take out a large number of loans from various of the Butchers' banks with no intention or ability to repay them. In return, the Butchers sent him legal work, and allowed him to keep some of the proceeds of the loans. The debt service on the loans was to be paid by taking out ever larger loans to cover it. During the course of the scheme, through 1982, Schledwitz took out over $1.5 million in loans, despite the fact that his income in 1982 was $52,163, his all-time high.[19] That the loans were fraudulent was evidenced in part by the fact that his income and business enterprises did not justify granting him the loans, and that it was not in the banks' interest to make the loans.

During the course of the investigation, Schledwitz and the government executed four successive statute of limitations (SOL) waivers. The final waiver, executed on May 26, 1988, read as follows:

> WHEREAS, attorneys for the United States have indicated that there are possible criminal charges which may be brought against KARL A. SCHLEDWITZ, either in the Eastern District of Tennessee or the Western District of Tennessee; and
>
> WHEREAS, at least some of the possible charges that may be brought by the United States against KARL A. SCHLEDWITZ conceivably

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[19] His income was as follows: 1978, $13,293; 1979, $34,313; 1980, $28,385; 1981, $31,994. After the banks' collapse, Schledwitz had over $1.5 million in obligations with the FDIC, which he settled for $90,000, and $485,000 in obligations to the SIBC, which he settled for $30,000.

could be barred by the applicable statute of limitations; and

WHEREAS, the attorneys for both the United States and KARL A. SCHLEDWITZ himself, desire to have discussions regarding the disposition of those possible charges;

IT IS, THEREFORE, AGREED that KARL A. SCHLEDWITZ will, and does hereby, waive the application of the statute of limitations for a period of ninety (90) days from the judgment of conviction, acquittal, dismissal or other resolution of all pending charges in United States v. Schledwitz, CR. 87-20193-H, as to any charge which might have been brought but which was delayed because of this Agreement and Waiver. KARL A. SCHLEDWITZ agrees to this waiver after being fully advised by his attorney of the legal consequences of this Agreement and Waiver.

This Agreement and Waiver is in addition to the Agreement to Waive Statute of Limitations executed by the parties on May 18, 1987, July 7, 1987, and January 5, 1988, and it is the intent of the parties that this Agreement and Waiver extend the May 18, 1987, July 7, 1987, and January 5, 1988 Agreements for an additional ninety (90) days from and after the judgment of conviction, acquittal, dismissal or other resolution of all pending charges in United States v. Schledwitz, CR. 87-20193-H.

On April 27, 1990, Schledwitz's trial in the United States District Court for the Western District of Tennessee (CR-87-20193-H) ending in a mistrial. On January 21, 1992, Schledwitz was named in an eight-count indictment in the Eastern District of Tennessee in the case at hand.

Among the claims in the indictment was that Schledwitz borrowed $40,000 from the City and County Bank of Roane County (C&C Roane) to repay a C.H. Butcher gambling debt at Aladdin's Castle in Las Vegas, and that he borrowed $115,000 from the City and County Bank of Anderson County (C&C Anderson) to promote the Butchers' political interests in West Tennessee.

On March 6, 1992, Schledwitz filed a motion to dismiss Counts 1 through 7 of the indictment on the ground that the SOL precluded the prosecution and that the SOL waivers he had executed had expired. In other words, the indictment was brought too late. While that motion was under consideration, on March 30, 1992, Schledwitz filed a second motion to dismiss the indictment, claiming that the agreement to waive the SOL precluded the government from bringing the instant prosecution until all of Schledwitz's other cases itemized in the agreement were resolved. Schledwitz at that time was defending himself on charges in federal court in Memphis, charges which ended in a mistrial. In other words, Schledwitz was arguing that the indictment was brought too soon.

The district court ultimately denied Schledwitz's motions and allowed the case to go to trial. After the close of the government's proof, the district court granted Schledwitz's motion for a judgment of acquittal as to Counts 4-8. He was found guilty of Counts 1-3, each of which was for mail fraud, in violation of 18 U.S.C. § 1341. He appeals, claiming that his prosecution was barred by the SOL and alleging defects at trial.

II

The district court's interpretation of the meaning of the SOL agreement between the government and Schledwitz is a factual finding. Therefore, we review for clear error.

A defendant may waive statutory rights. *United States v. Del Percio*, 870 F.2d 1090 (6th Cir. 1989). The agreement was sufficiently specific that a person of normal intelligence could understand the waiver. Furthermore, Schledwitz himself is an attorney, he was represented by counsel, and he surely understood, or should have understood, the terms of the agreement. We have no trouble in finding that Schledwitz could, and did, waive the statute of limitations.

The agreement states that the government may not start a prosecution against Schledwitz any later than ninety days after the charges referred to in the agreement are resolved. A mistrial is not a resolution. Therefore, the statute of limitations as contemplated in the waiver had not run.

At oral argument, Schledwitz contended that the government was not allowed to start prosecuting him until the other charges were resolved and 90 additional days had passed. He also argued that the waiver would not be valid after the 91st day. This interpretation would produce the odd result that prosecution would be barred for a certain period of time, revive for one day, then be barred once again.

We find that the document by its terms prohibits the government from waiting for a period longer than ninety

days after the charges mentioned in the waiver agreement were resolved. There was nothing in the document even hinting that a prosecution started at any earlier time would be premature.

III

Schledwitz argues that there was insufficient evidence to prove that the communication forming the basis of his convictions were mailed. He is correct when he asserts there was no direct proof that the documents at issue were mailed: the envelopes in which the documents were received were not introduced into evidence. However, it is not necessary to use direct evidence to prove all the elements of the crime. Circumstantial evidence alone can be sufficient. The standard of review is whether, after looking at the evidence in the light most favorable to the government, any reasonable person could find the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781 (1979).

Count 1 charged the mailing of a September 29, 1982 letter from Terry Bridgman, an officer of United American Bank (UAB) Hamilton, to Jesse Barr in Knoxville, Tennessee, relating to a $300,000 loan made by UAB Hamilton.[20] The letter stated "Enclosed please find a renewal note on Karl Schledwitz for his note which is due July 31, 1982. He is also past due on interest for 7/31/82 . . . and 8/31/82." The document offered into

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[20] The mail fraud statute does not require that the defendant himself mail a document. It is sufficient that his conduct caused others to mail qualifying documents.

evidence was an unsigned copy of the letter Bridgman sent.

Evidence adduced on Count 1 circumstantially showed that normal practice in Bridgman's office was to use the United States Postal Service. A witness testified that the standard practice in the office was to use the mail service. The fact that the witness did not have an independent recollection of the mailing is not fatal to the charge. The letter at issue refers to a renewal note, and Government Exhibit #32 was the executed renewal note. The government is not bound to eliminate speculation on all other possible routes the letter and renewal note may have taken, notwithstanding Schledwitz's assertion that he may have gone into the bank one day and executed the renewal note in person.

The mailing charged in Count 2 was a letter from Frank Knies, an officer of C&C Roane, to Schledwitz, which read:

> Enclosed is a renewal note and your commercial loan payment notice. Please sign the note where indicated by the X and return in the enclosed self-addressed envelope along with your principal and interest payments to this office.

Count 3 charges the mailing of the renewal note charged in the Count 2 mailing, along with a principal and interest payment.

Knies testified that the Count 2 letter was sent through the U.S. mail and that the Count 3 renewal was received in the U.S. mail – though he did not as a matter of course attend to his mail directly. The government entered into evidence a copy of the executed renewal

note, a letter acknowledging receipt of the note, and the loan history card showing receipt of the payment. Furthermore, the Count 2 letter states that a self-addressed stamped envelope is enclosed. Therefore, a reasonable juror could find that the relevant documents were mailed, and did constitute the offense of mail fraud.

IV

Schledwitz moved for a judgment of acquittal on Counts 2 and 3 of the indictment, claiming that the government had failed to establish a link between the mailings and the scheme to defraud. The district court denied the motion, and he renews the argument on appeal.

The government charged mail fraud under 18 U.S.C. § 1341. All the government needs to show is the general fraudulent scheme, and mailings to support the scheme. *United States v. Montgomery*, 980 F.2d 388, 393-94 (6th Cir. 1992). The evidence as to the items must be sufficient, but the nexus between the two can be quite slight, and many of the specifics of the fraud need not be itemized. *See United States v. Betancourt*, 838 F.2d 168, 174 (6th Cir.), *cert. denied*, 486 U.S. 1013, 108 S. Ct. 1749 (1988) (conspiracy).

The $40,000 loan was a fraud on the bank, without regard to its purpose, because Schledwitz knew that he could not repay it. In Schledwitz's best year, 1982, his interest obligations alone exceeded $170,000, while his income was less than $53,000. The president of C&C Roane testified that he made the loan because C.H. Butcher told him to, that he did not know what Schledwitz was going to do with the money, did not know

whether Schledwitz would be able to repay the loan, and had no banking relationship with Schledwitz.

This nexus also means that the government neither constructively amended, nor varied, the indictment. The indictment includes those loans the government contended were a part of the fraud scheme. Schledwitz knew what he had to defend against – that the loans in that section of the indictment that spelled out the frauds were improper. Schledwitz received proper notice.

V

Finally, Schledwitz argues it was reversible error to deny his motion for a new trial after the dismissal of Counts 4-8. He complains that the jury learned about the Memphis indictment and that there might have been some difference in the admissible evidence were he granted a new trial on Counts 1-3.

Schledwitz did not move either before or during trial for relief from prejudicial joinder. The trial court specifically instructed the jury that the dismissal of Counts 4-8 should have no bearing on their deliberations in Counts 1-3, and the court gave Schledwitz's proposed instruction that the jury should only consider evidence presented as to Counts 1-3. In addition, much if not all of the evidence that Schledwitz objects to would have been admissible even had the two sets of counts been severed. He has made no showing of prejudice either from misjoinder or failure to grant a new trial.

For the foregoing reasons, we AFFIRM the judgment of the district court.

FILED: December 20, 1993

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. CR-1-92-13
	)	
KARL A. SCHLEDWITZ	)	

ORDER

Two matters are currently pending in this eight-count prosecution for mail fraud.

In one, defendant Schledwitz has appealed from a ruling of United States Magistrate Judge John Y. Powers denying four pretrial discovery motions. [Doc. 45]. The Court hereby approves and adopts Judge Powers' rulings as its own. Accordingly, the appeal is DENIED.

In the other matter, defendant Schledwitz files an alternative motion to dismiss counts one through seven of the indictment. [Doc. 44].

On May 18, 1987, Schledwitz signed an agreement and waiver of the statute of limitations to protect himself from prosecution of "possible charges" in the Eastern District of Tennessee while he was defending himself on other charges in the Western District. The agreement provides that,

> KARL A. SCHLEDWITZ will, and does hereby, waive the application of the statute of limitations for a period of ninety (90) days from the judgment of conviction, acquittal, dismissal or other resolution of all pending charges in United States v. Schledwitz, CR-87-20193-H, as

> to any charge which might have been brought but which was delayed because of this Agreement and Waiver.

In his previous motion to dismiss counts one through seven, Mr. Schledwitz argued that these counts were time-barred because they were bought more than ninety days after the "resolution" of the charges he faced in the Western District. The United States disagreed, contending that those charges had not yet been resolved because his trial in CR-87-20193-H had ended in a mistrial. This Court accepted the government's reasoning and did not dismiss the relevant counts.

In his alternative motion, now ripe for disposition, Mr. Schledwitz argues that, if the Western District charges are not resolved, then the government has violated the agreement by bringing the instant action too soon. The agreement was intended to protect him from prosecution here until after resolution of the charges he faced in the Western District and simply provided the government with a ninety-day window in which it could file the otherwise time-barred charges. This window has not yet opened.

The Court agrees that the government cannot have it both ways. Either the Western District charges are resolved (and the first seven counts of this action are time-barred), or this action is premature. The Court is of the opinion that this action is premature.

Accordingly, the motion to dismiss is hereby GRANTED and counts one through seven of the indictment are DISMISSED without prejudice.

ENTER: _____

THOMAS G. HULL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA	)	
	)	No. CR-1-92-13
v.	)	
	)	
KARL A. SCHLEDWITZ	)	

ORDER

The indictment in this action charged defendant Karl A. Schledwitz with eight counts of mail fraud which occurred between 1979 and 1990. In an Order of April 22, 1992, finding that the charges brought in counts one through seven were premature, this Court dismissed those seven counts without prejudice. Several motions are currently ripe for disposition.

In one [of] them, the government requests that this Court reconsider its order dismissing the seven counts. [Doc. 54]. In making that ruling, the Court interpreted a poorly-written "Agreement and Waiver of Statute of Limitations" signed by the parties as creating a 90-day window in which the government could bring otherwise time-barred charges against Mr. Schledwitz after the final disposition of CR 87-20193-H pending against him in the United States District Court for the Western District of Tennessee.

Upon reconsideration of that ruling, the Court accepts the government's argument that, under the agreement, it could have brought the charges against Mr. Schledwitz any time within the last five years, but no later than 90 days after resolution of the other case.

Accordingly, the motion to reconsider is hereby GRANTED and that portion of the April 22 Order which dismisses the first seven counts of the indictment is hereby SET ASIDE.

Also before the Court is a motion filed by defendant Schledwitz to dismiss Count 8, the remaining count of the indictment. [Doc. 56].

The original indictment in this action charges Mr. Schledwitz with participation in two separate schemes to defraud. Counts One, Two and Three involve a scheme to defraud various Butcher-controlled banks which allegedly began in September of 1979, and continued until about March of 1983. Mr. Schledwitz is charged with allowing himself to be used as a nominee for "loans" that were not actually to him but were for Jake and C.H. Butcher's use.

Counts Four through Eight involve a second scheme beginning in March of 1983, when the FDIC had taken over the banks and begun its collection efforts, and continuing until about February of 1990. According to the government, Mr. Schledwitz's objective in the scheme was to pay only a small fraction of the total amount due on his loans. He ultimately settled his debt of approximately 1.75 Million with the FDIC for $90,000.

Count Eight of the indictment involves a letter from Mr. Schledwitz to Don Franklin of the FDIC, written on February 2, 1990, at the behest of the FDIC, to put into writing a verbal offer to settle Mr. Schledwitz's debts.

In moving to dismiss Count Eight, Mr. Schledwitz argues that this letter to the FDIC was mailed subsequent

to any scheme to defraud, and not in furtherance of such a scheme or sufficiently related to it. Moreover, he points out that the mailing at issue in Count Eight was written at the FDIC's request.

The Court sees no reason why Count Eight should be dismissed. The government will be allowed to attempt to prove its allegations that the mailing of February 2, 1990, was in furtherance of the scheme, described in Count IV, to pay only a small fraction of the debt Mr. Schledwitz had incurred.

Accordingly, the defendant's motion to dismiss Count Eight is hereby DENIED.

Finally, Mr. Schledwitz has moved for a hearing regarding the scope of abuses or defects in the government's handling of grand jury testimony and exhibits. [Doc. 52]. In support of this motion, he points out that the government has already filed, unsealed, and without prior leave of the court which supervised the grand jury, a transcript of a portion of his September 1990 grand jury testimony and a personal financial statement of his which almost certainly was furnished by a financial institution in response to a grand jury subpoena. There is no question that these items are in the Court's record as exhibits to the government's opposition to the defendant's motion to transfer the proceedings to the Western District of Tennessee. Mr. Schledwitz argues that the government's treatment of this sensitive material is evidence that there may be other abuses of the grand jury proceedings. He would have the Court order the government to provide him with the following: 1) a list of all persons to whom it

has given confidential grand jury information; 2) documentation of grand juries that have considered, or are considering, charges against him including dates, jurisdictions, and witnesses; 3) disclosure of statements made to the grand juries by the prosecuting attorneys, including any instructions on the law or comments on the evidence; and 4) disclosure of whether or not testimony was transmitted between different grand juries, and, if so, the manner and means by which the testimony was made available to subsequent grand juries. In addition, he would have this Court conduct a hearing on the government's handling of grand jury materials to determine the scope of its abuses.

Rule 6(e)(3)(A) of the Federal Rules of Criminal Procedure, permits disclosure of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, to "an attorney for the government for use in the performance of such attorney's duty." The government suggests that, therefore, an Assistant United States Attorney may use this material, in the performance of his duties, in responding to a defendant's motion in a criminal case. It suggests that there is no difference between the government's disclosure of this material to impeach a defendant's position in a motion (in this case the motion to transfer the proceedings to the Western District) and the government's use of grand jury testimony to impeach a defendant's testimony at trial. The Court disagrees.

It appears that, in fact, the United States has improperly disclosed grand jury materials. While it is by no means clear that there is a need for a hearing on the

extent of grand jury abuse, some inquiry into the proceedings may be appropriate.

Accordingly, the defendant's motion is GRANTED in PART. The United States is hereby ORDERED to provide the Court, under seal, within fifteen (15) days from the date of this Order, with a list of all persons to whom it has given confidential grand jury information concerning Mr. Schledwitz and the dates, substance, and purpose of these disclosures. The Court will determine whether or not any of this information should be disclosed to the defendant and whether or not sanctions are required by the government's conduct.

ENTER: _____

THOMAS G. HULL
UNITED STATES DISTRICT JUDGE

No. 92-6314
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA Plaintiff-Appellee v. KARL A. SCHLEDWITZ Defendant-Appellant	)	ORDER FILED: February 17, 1994

BEFORE: RYAN and BOGGS, Circuit Judges; and ROSEN,* District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

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* Hon. Gerald E. Rosen, United States District Judge for the Eastern District of Michigan, sitting by designation.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk

AGREEMENT TO WAIVE STATUTE OF LIMITATIONS

WHEREAS, attorneys for the United States have indicated that there are possible criminal charges which may be brought against Karl A. Schledwitz, either in the Eastern District of Tennessee or the Western District of Tennessee; and

WHEREAS, at least one of the possible charges to be brought by the United States against Karl A. Schledwitz conceivably could be barred by the applicable statute of limitations, if not brought within the next 60 days; and

WHEREAS, the attorneys for both the United States and Karl A. Schledwitz, and Karl A. Schledwitz himself, desire to have discussions regarding the disposition of those possible charges;

IT IS, THEREFORE, AGREED that Karl A. Schledwitz will waive the application of the statute of limitations which might apply to any charge which could be brought during that 60 day period, but which is delayed because of this Agreement. Karl A. Schledwitz agrees to this waiver of the application of the statute of limitations after being advised by his attorney of the legal consequences of that waiver.

DATED this 18th day of May, 1987.

_____

KARL A. SCHLEDWITZ

_____

ALBERT C. HARVEY, ATTORNEY
FOR KARL A. SCHLEDWITZ

DANIEL CLANCY, ASSISTANT
U.S. ATTORNEY FOR THE
WESTERN DISTRICT OF
TENNESSEE

Executed in my presence
May 18, 1987
Aaron Brown, Jr.
U.S. Magistrate

AGREEMENT AND WAIVER OF STATUTE OF LIMITATIONS

WHEREAS, attorneys for the United States have indicated that there are possible criminal charges which may be brought against KARL A. SCHLEDWITZ, either in the Eastern District of Tennessee or the Western District of Tennessee; and

WHEREAS, at least some of the possible charges that may be brought by the United States against KARL A. SCHLEDWITZ conceivably could be barred by the applicable statute of limitations; and

WHEREAS, the attorneys for both the United States and KARL A. SCHLEDWITZ, and KARL A. SCHLEDWITZ himself, desire to have discussions regarding the disposition of those possible charges;

IT IS, THEREFORE, AGREED that KARL A. SCHLEDWITZ will, and does hereby, waive the application of the statute of limitations for a period of six (6) months from and after July 7, 1987, as to any charge which might have been brought but which was delayed because of this Agreement and Waiver. KARL A. SCHLEDWITZ agrees to this waiver after being fully advised by his attorney of the legal consequences of this Agreement and Waiver.

This Agreement and Waiver is in addition to the Agreement To Waive Statute of Limitations executed by the parties on May 18, 1987, and it is the intent of the parties that this Agreement and Waiver extend the May 18, 1987 Agreement for an additional six (6) months after July 7, 1987.

Dated this 7th day of July, 1987.

KARL A. SCHLEDWITZ

ALBERT C. HARVEY, Attorney
for Karl A. Schledwitz

DANIEL A. CLANCY
Assistant United States
Attorney for the Western
District of Tennessee

Executed in my
presence this 7th
day of July, 1987
James H. Allen
U.S. Magistrate

AGREEMENT AND WAIVER OF STATUTE OF LIMITATIONS

WHEREAS, attorneys for the United States have indicated that there are possible criminal charges which may be brought against KARL A. SCHLEDWITZ, either in the Eastern District of Tennessee or the Western District of Tennessee; and

WHEREAS, at least some of the possible charges that may be brought by the United States against KARL A. SCHLEDWITZ conceivably could be barred by the applicable statute of limitations; and

WHEREAS, the attorneys for both the United States and KARL A. SCHLEDWITZ, and KARL A. SCHLEDWITZ himself, desire to have discussions regarding the disposition of those possible charges;

IT IS, THEREFORE, AGREED that KARL A. SCHLEDWITZ will, and does hereby, waive the application of the statute of limitations for a period of six (6) months from and after January 5, 1988, as to any charge which might have been brought but which was delayed because of this Agreement and Waiver. KARL A. SCHLEDWITZ agrees to this waiver after being fully advised by his attorney of the legal consequences of this Agreement and Waiver.

This Agreement and Waiver is in addition to the Agreement To Waive Statute of Limitations executed by the parties on May 18, 1987 and July 7, 1987, and it is the intent of the parties that this Agreement and Waiver extend the May 18, 1987 and July 7, 1987 Agreements for an additional six (6) months after January 5, 1988.

Dated this 5th day of January, 1988.

KARL A. SCHLEDWITZ

ALBERT C. HARVEY, Attorney
for Karl A. Schledwitz

DEVON L. GOSNELL
Assistant United States
Attorney for the Western
District of Tennessee

Executed in my
presence this 5th
day of January, 1988
James H. Allen
U.S. Magistrate

AGREEMENT AND WAIVER OF STATUTE OF LIMITATIONS

WHEREAS, attorneys for the United States have indicated that there are possible criminal charges which may be brought against KARL A. SCHLEDWITZ, either in the Eastern District of Tennessee or the Western District of Tennessee; and

WHEREAS, at least some of the possible charges that may be brought by the United States against KARL A. SCHLEDWITZ conceivably could be barred by the applicable statute of limitations; and

WHEREAS, the attorneys for both the United States and KARL A. SCHLEDWITZ, and KARL A. SCHLEDWITZ himself, desire to have discussions regarding the disposition of those possible charges:

IT IS, THEREFORE, AGREED that KARL A. SCHLEDWITZ will, and does hereby, waive the application of the statute of limitations for a period of ninety (90) days from the judgment of conviction, acquittal, dismissal or other resolution of all pending charges in United States v. Schledwitz, CR. 87-20193-H, as to any charge which might have been brought but which was delayed because of this Agreement and Waiver. KARL A. SCHLEDWITZ agrees to this waiver after being fully advised by his attorney of the legal consequences of this Agreement and Waiver.

This Agreement and Waiver is in addition to the Agreement To Waive Statute of Limitations executed by the parties on May 18, 1987, July 7, 1987, and January 5, 1988, and it is the intent of the parties that this Agreement and Waiver extend the May 18, 1987, July 7, 1987,

and January 5, 1988 Agreements for an additional ninety (90) days from and after the judgment of conviction, acquittal, dismissal or other resolution of all pending charges in United States v. Schledwitz, CR. 87-20193-H.

DATED: This 26th day of May, 1988.

KARL A. SCHLEDWITZ

ALBERT C. HARVEY, Attorney
for Karl A. Schledwitz

DEVON L. GOSNELL
Assistant United States
Attorney for the Western
District of Tennessee

Signed before
Magistrate Aaron C. Brown
5/26/88

UNITED STATES CONSTITUTION

AMENDMENT 5

Criminal Actions – Provisions concerning – Due Process of law and just compensation clauses

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION

AMENDMENT 6

Rights of the accused

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.